DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to section 920 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Prevocational Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Prevocational Services, a habilitative service provided to participants with mental retardation and developmental disabilities in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules at 54 DCR 2343 (March 16, 2007) to increase the daily limit to eight (8) hours, to establish a minimum staffing ratio, and to require the development of a service plan with measurable outcomes that will more clearly define the service being provided. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), has advised the Director that the maintenance and expansion of prevocational services to persons with mental retardation and developmental disabilities is essential to the continuation of the Waiver.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of prevocational services. These emergency rules are needed so that, on the effective date of the Waiver as modified, there will be rules in place consistent with the provisions of the Waiver as modified to increase the daily limit to eight (8) hours, establish a minimum staffing ratio, and require the development of a service plan with identified outcomes that will more clearly define the service being provided.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services have also approved the Waiver with an effective date of November 20, 2007. The emergency rulemaking was adopted on October 25, 2007 and will become effective on November 20, 2007. The emergency rules will remain in effect for 120 days or until February 22, 2007 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

Section 920 (Prevocational Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

920 PREVOCATIONAL SERVICES

920.1 Prevocational services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

920.2 To be eligible for prevocational services under the Waiver, a vocational assessment must document that the person is not expected to be able to join the general work force or participate in transitional shelter workshops within one (1) year.

920.3 Prevocational services are designed to prepare a person for paid or unpaid employment, but not to develop a specific job skill.

920.4 Prevocational services eligible for reimbursement shall be as follows:

(a) Prevocational assessment activities, including situational assessments provided at community businesses and other community resources;
(b) Social skills training, including but not limited to the following:
  (1) Learning to interpret instructions;
  (2) Interpersonal relations;
  (3) Communication;
  (4) Respecting the rights of others; and
  (5) Problem solving;
(c) The development of work skills, which shall include, at a minimum, teaching the person the following concepts:
  (1) Compliance with employer instructions;
  (2) Attendance;
  (3) Task completion; and
  (4) On-the-job safety;
(d) Coordination of:
  (1) Time-limited volunteering and other prevocational, skills training indicated in the person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care; and
  (2) Transportation to community activities necessary to carry out this service through the Medicaid Non-Emergency Transportation Broker.

920.5 A functional assessment must be conducted at least annually by the provider to evaluate each individual's acquisition of employment-related skills based on the person's vocational preferences and goals.

920.6 Each prevocational provider shall develop an individualized plan for each person that is in keeping with their interests, preferences, choices, goals and prioritized

needs. The activities in the plan shall be functional, chosen by the person, and provide a pattern of life experiences common to other persons of their age and the community at large. The plan must identify specific measurable outcomes for the development of vocational skills that are consistent with goals of the IHP or ISP and Plan of Care.

920.7 Prevocational services may be provided in non-facility-based or facility-based settings.

920.8 When prevocational services are provided in a facility-based setting, each facility shall comply with all applicable federal, District, or state and local laws and regulations.

920.9 Before a provider of prevocational services may pay a person wages that are below the hourly minimum wage rate, the provider shall first obtain a certification of exemption from the U.S. Department of Labor, Employment Standards Administration Wage and Hour Division.

920.10 Prevocational services are ineligible for reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.)* or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.)* (hereinafter the "Acts"). Each person receiving prevocational services shall submit documentation that demonstrates that prevocational services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and IHP or ISP and Plan of Care.

920.11 All prevocational providers shall deliver appropriate services to persons requiring physical assistance to facilitate their participation in prevocational services activities. All prevocational providers shall ensure that each person has access to first aid.

920.12 Prevocational services shall be authorized by the interdisciplinary team and provided in accordance with each person's IHP or ISP and Plan of Care. All prevocational services shall be reflected on the IHP or ISP and Plan of Care as habilitative rather than explicit employment objectives.

920.13 Each prevocational services provider shall:

(a) Be a non-profit, home health or social service agency or other business entity;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Prevocational Services under the Waiver;
(c) Maintain a copy of the IHP or ISP and Plan of Care approved by the Department on Disability Services (DDS);

(d) Ensure that all prevocational services staff are qualified and properly supervised;
(e) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care.
(f) Participate in the annual IHP or ISP and Plan of Care meeting or case conferences when indicated;
(g) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules and maintain a copy of the acceptance or declination of the vaccine;
(h) Provide training in infection control procedures consistent with Occupational Safety and Health Administration (OSHA), U.S. Department of Labor, as set forth in 29 CFR § 1910.1030; and
(i) Maintain a staff-to-person ratio as indicated in the IHP or ISP and Plan of Care up to a maximum ratio of 1:4 that ensures that the service meets the person's individual needs and is provided appropriately and safely.

920.14 Each provider of prevocational services shall demonstrate, through experience or academic attainment of the executive staff, the ability and qualification to provide prevocational services for individuals with mental retardation with varying habilitation needs. The executive staff must have at least one individual with a Master's degree in Vocational Rehabilitation or a similar discipline and four (4) years of combined supervisory, administrative, and "job coaching" or experience providing employment services to persons with disabilities.

920.15 Each person providing prevocational services for a provider under section 920.13 shall meet all of the following requirements:

(a) Be at least eighteen (18) years of age;
(b) Be acceptable to the person to whom services are provided;
(c) Demonstrate annually that he or she is free from communicable disease as confirmed by an annual PPD Skin Test or documentation from a physician;
(d) Have a high school diploma or general educational development (GED) certificate;
(e) Have at least one (1) year of experience working with persons with mental retardation;
(f) Agree to carry out the responsibilities to provide services consistent with the person's IHP or ISP;
(g) Complete pre-service and in-service training approved by DDS;
(h) Have the ability to communicate with the person to whom services are provided;
(i) Be able to read, write, and speak the English language; and
(j) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of

2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44--551 *et seq.*).

920.16 Prevocational services shall be supervised by an individual that is a qualified professional with a minimum of a Bachelor's degree and two (2) years of combined supervisory and "job coaching" or experience providing employment services to persons with disabilities.

920.17 Prevocational services shall not be provided at the same time as day treatment, supported employment, or day habilitation services.

920.18 The reimbursement rate for prevocational services shall be fifteen dollars and eighty cents ($15.80) per hour. Services shall be provided for a maximum of eight (8) hours a day, not including travel time. The billable unit of service for prevocational services shall be fifteen (15) minutes. The reimbursement rate for prevocational services shall be three dollars and ninety-five cents ($3.95) per billable unit. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.

920.19 Prevocational providers shall submit to the DDS a completed Prevocational Individualized Services Person Quarterly Report, no later than the 15th day of January, April, July, and October, for the preceding three-month period. The report shall include the following information for each participant served:

(a) Name of the person;
(b) Community inclusion opportunities;
(c) Volunteer activities;
(d) Prevocational facility and non-facility-based activities; and
(e) Progress to achieving outcomes from individualized plan developed in accordance with section 920.6.

920.20 No payment shall be made for routine care and supervision, which is the responsibility of the family or group home provider.

920.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Communicable Disease – Shall have the same meaning as set forth in section 201 of Chapter 2 of Title 22, District of Columbia Municipal Regulations.

Family – Any person who is related to the person receiving services by blood, marriage or adoption.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Situational or Functional Assessment – Provides competitive or real work sites in the community for the systemic assessment and observation of the person; identifies work site characteristics and person adaptations, training procedures, support needs related to the person's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

Waiver – Shall mean the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02) (2006 Rpl.), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to section 929 of Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "Supported Employment Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for Supported Employment Services, a habilitative service provided to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

This rulemaking amends the previously published rules at 51 DCR 4095 (April 23, 2004), to increase the options for supported employment by adding micro-enterprises and group activity, to establish more specific and formal outcomes for the different service components, and to add rates for professionals, paraprofessionals, and group supports.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of supported employment services. These emergency rules are needed so that, on the effective date of the Waiver as modified, there will be rules in place consistent with the provisions of the Waiver as modified to increase the options for supported employment by adding micro-enterprises and group activity, to establish more specific and formal outcomes for the different service components, and to add rates for professionals, paraprofessionals, and group supports.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services has also approved the corresponding Waiver with an effective date of November 20, 2007. The emergency rulemaking was adopted on November 19, 2007 and will become effective on November 20, 2007. The emergency rules will remain in effect for 120 days or until March 18, 2008 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

Section 929 (Supported Employment Services) of Chapter 9 of Title 29 DCMR is deleted in its entirety and amended to read as follows:

929 SUPPORTED EMPLOYMENT SERVICES

929.1 Supported employment services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

929.2 Supported employment is intended for individuals for whom competitive employment has not traditionally occurred or has been interrupted. The aim of supported employment services is to emphasize the assets and skills of the person and to match the person to a job that maximizes those assets and minimizes deficits.

929.3 Supported employment shall consist of paid competitive work that offers ongoing support services in an integrated work setting where wages are paid at or above minimum, consistent with the Fair Labor Standards Act. The level of employment participation may be full-time or part-time based on the interests and abilities of the individual; however, to maintain eligibility for supported employment services each person shall be employed at least twenty (20) hours per week at minimum wage or better.

929.4 Supported employment services eligible for reimbursement shall be as follows:

(a) Intake and assessment;
(b) Job placement;
(c) Job training and support; and
(d) Follow along services.

929.5 Supported employment services are ineligible for reimbursement if the services are available to the person through programs funded under Title I of the Rehabilitation Act of 1973 (Pub. L. 93-112; 29 U.S.C. § 720 *et seq.)* or the Individuals with Disabilities Education Act (Pub. L. 91-230; 20 U.S.C. § 1400 *et seq.)* (hereinafter the "Acts"). Each person receiving supported employment services shall submit documentation that demonstrates that services are not otherwise available pursuant to the Acts referenced above, for inclusion in his or her record and IHP or ISP and Plan of Care. Court-ordered vocational assessment shall be provided by authorizing intake and assessment services under this section if services provided through programs funded under Title I of the Rehabilitation Act of 1973 cannot provide assessment services in the timeframe set forth in the Court's Order.

929.6 Professionals authorized to provide supported employment activities without supervision are as follows:

(a) Vocational Rehabilitation Counselor;
(b) A person with a Master's degree in a social services discipline and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities; or
(c) Rehabilitation Specialist.

929.7 Paraprofessionals authorized to perform supported employment activities under the supervision of a professional listed in section 929.6 are as follows:

(a) Job Coaches; or
(b) Employment Specialists.

929.8 Intake and assessment activities include, but are not limited to, the following:

(a) Conducting an individualized vocational and situational assessment;
(b) Developing an individualized employment plan that includes the person's job preferences and desires;
(c) Assessing person-centered employment information, including the employee's interest in doing the job, transportation to and from work, family support, and financial issues;
(d) Counseling an interested person on the tasks necessary to start a business; and
(e) Providing individual and/or group employment counseling.

929.9 As a result of intake and assessment activities, the provider shall complete and deliver a comprehensive vocational assessment report to the Department on Disability Services (DDS) Case Manager that includes the following:

(a) Employment-related strengths and weaknesses (*e.g.*, task focus);
(b) Available family and community supports;
(c) Accommodations and supports that may be required on the job; and
(d) If a specific job or entrepreneurial effort has been targeted the assessment may also include:
    (1) Individualized training needed to acquire and maintain acceptable production skills;
    (2) Anticipated level of interventions that will be required by the job coach;
    (3) Type of integrated work environment in which the person can potentially succeed; and
    (4) If the individual is not immediately employable, activities and supports that are need to improve potential for employment.

929.10 Intake and assessment activities shall be billed at the unit rate. This service shall not exceed three hundred twenty (320) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8)

continuous minutes of service to bill one (1) unit of service. The reimbursement rate is forty-three dollars ($43.00) per hour if performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents ($25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended intake and assessment services are required, the provider shall submit a written justification to the DDS Case Manager. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights. The disposition shall be documented in the person's IHP or ISP and Plan of Care. Intake and assessment shall be prior authorized by DDS as a discrete service and no other supported employment services will be approved without the development and delivery of the completed vocational assessment to the DDS Case Manager.

929.11 Job placement activities eligible for reimbursement include, but are not limited to, the following:

(a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;
(b) Conducting workshops or other activities to instruct persons on proper work attire, behaviors and expectations;
(c) Completing job applications with or on behalf of the person;
(d) Assisting the person with job exploration and placement, including assessing opportunities for advancement;
(e) Visiting employment sites and attending employment networking events;
(f) Making telephone calls to prospective employers, utilizing the internet, magazines, newspapers and other publications as leads;
(g) Collecting descriptive data regarding various types of employment opportunities, for purposes of preparing a standardized set of requirements for prospective employees;
(h) Negotiating employment terms with or on behalf of the person;
(i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start up capital, and other tasks necessary to starting a small business; and
(j) Working with interested persons and employers to develop group placements.

929.12 Job placement activities shall be billed at the unit rate. This service shall not exceed four hundred (400) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill for one (1) unit of service. The reimbursement rate is forty-three dollars ($43.00) per hour when performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and

thirty cents ($25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended job placement services are required the provider shall submit a written justification in support of the extended services to the DDS Case Manager for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights. The disposition shall be documented in the person's IHP or ISP and Plan of Care.

929.13 Job training and support activities are those activities designed to assist and support the person after employment has been obtained. Job training and support activities eligible for reimbursement include, but are not limited to, the following:

(a) On-the-job training in work and work-related skills required to perform on the job;
(b) Work site support that is intervention-oriented and designed to enhance work performance, modify inappropriate behaviors, re-training as jobs change, ongoing counseling, and assistance to ensure job retention;
(c) Supervision and monitoring of the person in the workplace;
(d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, transportation systems, mobility training and changing jobs.
(e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of placement, integration, number of hours worked, need for adaptations and offsite supports such as transportation services;
(f) Consulting with other professionals and the person's family, as necessary; and
(g) Consulting with the person's employer, co-workers or supervisors, as necessary.

929.14 Job training and support activities shall not exceed one thousand, two hundred and eighty (1280) units per Plan of Care year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. The reimbursement rate is forty-three dollars ($43.00) per hour when performed by a professional listed in section 929.6. The reimbursement rate is twenty-five dollars and thirty cents ($25.30) per hour if performed by a paraprofessional under the supervision of a professional listed in section 929.7. If extended job training and support activities are required the provider shall submit a written justification in support of the extended services to the DDS Case Manager for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of

receipt. Disapproval will be accompanied by notice of Fair Hearing Rights. The disposition shall be documented in the person's IHP or ISP and Plan of Care.

929.15 Long-term follow-along activities eligible for reimbursement include, but are not limited to, the following:

(a) Periodic monitoring of job stability;
(b) Interventions to address issues that threaten job stability;
(c) Providing retraining or cross training when job duties change;
(d) Facilitating integration and natural supports at the job site; and
(e) Facilitating job advancement and job mobility.

929.16 Follow-along activities shall be reimbursed at the same rates as set forth in section 926.14 and shall not exceed seven hundred and sixty-eight (768) units per Plan of Care year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. If extended services are required the provider shall submit a written justification in support of the extended services to the DDS Case Manager for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Disapproval will be accompanied by notice of Fair Hearing Rights. The disposition shall be documented in the person's IHP or ISP and Plan of Care.

929.17 The three models of supported employment eligible for reimbursement shall be as follows:

(a) Individual job support;
(b) Group supported employment; and
(c) Entrepreneurial.

929.18 Group supported employment services are delivered when there is more than one (1) person at the job site who is receiving supported employment services from the supported employment services provider. The job coach shall provide training and other services as described in 929.13 to each Waiver participant as needed. The rate for this service is sixteen dollars and forty cents per hour ($16.40) billable in fifteen (15) minute units of four dollars and ten cents ($4.10). The provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. This rate assumes at least four (4) persons are receiving support in the same job location, and are receiving job coaching services from one (1) supported employment services staff person. Each Waiver participant may be billed for the time the job coach is supporting the any of the four (4) participants.

929.19 Each provider shall provide the ongoing supports at the work site needed for the person to obtain job stability after employment has been obtained. Once the person is stable on the job, the provider shall make a minimum of two (2) job site contacts per month for the purpose of monitoring job stability.

929.20 Reimbursement for supported employment services provided at the work site in which persons without disabilities are employed shall only be made for adaptations, supervision and training required by the person who receives Waiver services pursuant to these rules. No payment shall be made for supervisory activities, which are rendered as a normal part of the business setting.

929.21 When applicable, each provider shall be certified by the U.S. Department of Labor.

929.22 When applicable, each provider shall coordinate with DDS/DDA and the employer for the provision of appropriate services for each person requiring physical assistance to accomplish basic activities of daily living on the work site.

929.23 When applicable, each provider shall coordinate with DDS/DDA and the employer to ensure that each person has access to appropriate first aid on the work site.

929.24 Supported employment services shall be pre-authorized and provided in accordance with each person's IHP or ISP and Plan of Care.

929.25 Each provider shall develop a plan that addresses how the provider will meet the needs and communicate with non-English speaking persons.

929.26 Each provider of supported employment services shall be a social services agency as described in Chapter 19 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), Section 1903.1. In addition, the provider agrees to:

(a) Be a member of the person's interdisciplinary team;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Supported Employment Services under the Waiver; and
(c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person.

929.27 Each person providing supported employment services for a provider under section 929.26 shall meet the requirements in Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), section 1911.

929.28 Supported employment services may be provided either exclusively as the vocational service or in combination with prevocational or day habilitation services. Supported employment services shall not be provided concurrently with day treatment, day habilitation or prevocational services.

929.29 Supported employment services shall be provided for a maximum of eight (8) hours in a day and five (5) days in a week. The provider shall submit a written justification in support of the extended services to the DDS Case Manager for review. DDS shall review the submission and approve or disapprove the request for extension within ten (10) business days of receipt. Any disapproval shall be accompanied by notice of Fair Hearing Rights. The disposition shall be documented in the person's IHP or ISP and Plan of Care.

929.30 Supported employment services providers shall not bill for incentive payments, subsidies or unrelated vocational training expenses such as the following:

(a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;
(b) Payments that are passed through to users of supported employment services programs; or
(c) Payments for vocational training that is not directly related to the person's supported employment services program.

929.31 Each supported employment services provider shall maintain service records that accurately and adequately link the services billed to the IHP or ISP and Plan of Care for each participant receiving services, including:

(a) Person's name;
(b) Job coach's name;
(c) Date(s) of activities;
(d) Start and end times of activities;
(e) Purpose of activities; and
(f) Location of activities.

929.32 Each supported employment services provider shall record and report:

(a) Occurrences or behaviors by a participant that impede the progress of the group or the individual participant;
(b) Any unusual circumstances or events that impact the stability of the group or the individual participant;
(c) Any individual unusual incidents; and
(d) Actions taken to address behaviors or unusual circumstances.

929.33 Supported employment services providers shall submit to the DDS Case Manager a completed Supported Employment Individualized Services Consumer Quarterly Report, no later than the 15th day of January, April, July, and October, for the preceding three-month period. The report shall include:

(a) Name of the each person;
(b) Wages earned by each person;
(c) Hours worked by each person;
(d) Hours of activities for each person if not engaged in employment; and
(e) Aggregate calculation of wages earned, hours worked and hours of activities for persons not engaged in employment.

929.34 Each supported employment services provider shall maintain a copy of each person's record at least six (6) years after the date of discharge.

929.35 Time spent in transportation to and from the program shall not be included in the total amount of services provided per day. However, time spent in transportation to and from the program for the purpose of training the participant on the use of transportation services may be included in the number of hours of services provided per day for a period of time specified in the person's IHP or ISP and Plan of Care.

929.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Employment Specialist – A person with a four-year college degree in a social services discipline and a minimum of three (3) years of experience in a supported employment program; a person with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a person with a high school degree and five (5) years of experience in a supported employment program.

Entrepreneurial – Development and on-going support for micro-enterprises owned and operated by the participant. This assistance consists of: (a) assisting the participant to identify potential business opportunities; (b) assisting the participant in the development of a business and launching a business; (c) identification of the supports that are necessary in order for the participant to operate the business; and (d) ongoing assistance, counseling and guidance once the business has been launched.

Group – An employment situation in competitive employment in which a group of four or fewer participants with disabilities are working at a particular work setting. The participants may be disbursed throughout the company and among workers without disabilities or congregated as a group in one part of the business.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Supported Employment – A supported employment strategy in which a job coach places a participant into competitive employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site;

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Intake – A process designed to obtain information about the person and their needs as it relates to community integration and employment.

Integrated Work Setting – A work setting that provides daily contact with other employees and/or the general public.

Job Coach – A person with a four-year college degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program; a person with a college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or a person with a high school degree and three (3) years of experience in a supported employment program.

Long-term follow along activities – Ongoing support services necessary to assure job retention.

Person or Participant – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Rehabilitation Specialist – A persons with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; a person with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program; or a person with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Situational or Functional Assessment – A type of assessment that provides the person an opportunity to explore job tasks in real work environments in the community. This assessment is useful in identifying the type of employment that may be beneficial to the person and the support required by each person to succeed in the work environment. Provides competitive or real work sites in the community for the systemic assessment and observation of the person; identifies work site characteristics and person adaptations, training procedures, support needs related to the person's success in supported employment; and recommends specific plans for further services, including the appropriateness of continuing supported employment.

Vocational Assessment – An assessment designed to assist persons, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment outlines the life, relationships, challenges, and perceptions of the person as they relate to potential sources of community support and mentorship.

Vocational Rehabilitation Counselor – A persons with a Master's degree in Vocational Counsel Counseling, Vocational Rehabilitation Counseling or a similar degree from an accredited university; a person with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program; or, a person with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of an amendment to section 945 (Day Habilitation Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR). These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for day habilitation services, a habilitative service provided by qualified professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver), which was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), with an effective date of November 20, 2007.

This rulemaking amends the rules previously published at 54 DCR 2356 (March 16, 2007), as further amended recently by the notice of emergency and proposed rulemaking published at 54 DCR 10860 (November 9, 2007), to include language to pre-authorize and reimburse day habilitation services providers for professional one-to-one services. The recently published rulemaking reduces the billing rates based on the new rate methodology, increases the daily limit of service provision to eight (8) hours, establishes a minimum staffing ratio, and requires the development of a service plan with identified outcomes that will more clearly define the service being provided. The emergency rulemaking for day habilitation services published on November 9, 2007 at 54 DCR 10860 was effective on November 20, 2007, which was also the effective date of the CMS-approved Waiver.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of day habilitation services. These emergency rules are needed so that, on November 20, 2007, the effective date of the Waiver as modified, there will be rules in place consistent with the provisions of the Waiver as modified to provide professional one-to-one services in the context of day habilitation services.

The emergency rulemaking was adopted on November 19, 2007, and became effective on November 20, 2007. The emergency rules will remain in effect for 120 days or until March 17, 2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register.*

Section 945 of Chapter 9 of Title 29 DCMR is amended to include a new subsection 945.18 to read as follows:

945.18 To the extent pre-authorized by DDS, provided in accordance with the person's IHP or ISP and Plan of Care and DDS's restrictive controls policies and procedures, and otherwise consistent with the requirements of sections 945.7, 945.9 and 945.10, one-to-one services shall be available as a day habilitation service. The reimbursement rate for one-to-one services shall be thirty-one dollars and sixty cents ($31.60). Day habilitation one-to-one services shall be provided for a maximum of eight (8) hours a day, and shall not include travel time. The billable unit of service for day habilitation one-to-one services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service. The reimbursement rate for day habilitation one-to-one services shall be seven dollars and ninety cents ($7.90) per billable unit. To be eligible for reimbursement for day habilitation one-to-one services, the person shall be required to have a behavior support plan and meet at least one of the characteristics set out in section 979.12 for paraprofessional one-to-one services and at least one of the characteristics set out in section 979.13 for professional one-to-one services. For purpose of this subsection, in addition to the requirements for paraprofessional one-to-one services and professional one-to-one services as defined in section 979.99, day habilitation one-to-one services means services provided to one person exclusively by a day habilitation services provider who has been trained in all general requirements and possesses all training required to implement the person's specific behavioral and/or clinical protocols and support plans for a pre-authorized length of time.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 774; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 1913 of Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "One-Time Transitional Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for one-time transitional services provided by qualified providers to participants with dual diagnosis of mental retardation and mental illness in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

These rules establish standards governing the provision of OTT services for persons participating in the Waiver. OTT service is a new one-time service designed to facilitate the transition of a person from an institutional setting to a more integrated and less restrictive community setting. The service is limited to one use and will provide a maximum of $5000.00 to purchase furniture, cooking utensils, and other items essential to living in the community, and to cover moving expenses.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of OTT services. These emergency rules are needed so that, on the effective date of the Waiver as modified, there will be rules in place consistent with the provisions of the Waiver as modified to permit reimbursement of OTT services for persons moving out of institutional settings with a limitation of $5,000.00 per participant.

The District of Columbia Medicaid Program is also modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the corresponding Waiver with an effective date of November 20, 2007. The emergency rulemaking was adopted on November 19, 2007, and will become effective on November 20, 2007. The emergency rules will remain in effect for 120 days or until March 18, 2008 unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new section 1913 (One-Time Transitional Services) of Chapter 19 of Title 29 DCMR is added to reads as follows:

1913 ONE-TIME TRANSITIONAL SERVICES

1913.1 One-time transitional (OTT) services shall be reimbursed by the District of Columbia Medicaid Program for each person with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

1913.2 OTT services are non-recurring set-up expenses for persons in the Waiver who are transitioning from an institutional or another provider-operated living arrangement to a living arrangement in a private residence where the participant is directly responsible for their own living expenses.

1913.3 Reimbursement for OTT services may include:

(a) Security deposits that are required to obtain a lease for an apartment or home;

(b) Essential household furnishings and moving expenses required to occupy and use an apartment or home, including furniture, window coverings, food preparation items, and bed/bath linens;

(c) Set-up fees or deposits for utility or service access, including telephone, electricity, heating and water;

(d) Services necessary for the person's health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to procure needed resources.

1913.4 To be reimbursable, OTT service shall:

(a) Be reasonable and necessary as determined by the person's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care;

(b) Be clearly identified in the IHP or ISP and Plan of Care;

(c) Be unable to be purchased by the person due to the expense;

(d) Be necessary to enable the person to function with greater independence; and

(e) Not be obtainable from other sources.

1913.5 OTT services shall not include:

(a) Monthly rental or mortgage expense;

(b) Food;

(c) Regular utility charges;

(d) Household appliances or items that are intended for purely diversional or recreational purposes (*e.g.* television, cable or satellite installation for television programming, stereo or other audio equipment, or computerized gaming equipment); or

(e) Specialized electric and plumbing systems that are necessary to accommodate medical equipment and supplies.

1913.6 To be approved as an OTT service, the services shall be:

(a) Prior authorized by the Department on Disability Services; and

(b) Installed in one of the following:

(1) The person's own home; or

(2) An apartment or other rental property in which the person resides where the owner or service provider does not provide and is not compensated for furnishings, utensils and other items necessary to operate a household.

1913.7 Each provider of OTT service shall:

(a) Be a non-profit organization, home health agency, social service agency, or other business entity and shall meet the requirements set forth in Chapter 19 of Title 29 DCMR;

(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for OTT services under the Waiver; and

(c) Comply with all applicable business licensing requirements in the District of Columbia or in the jurisdiction where OTT services are provided.

1913.8 Reimbursement for OTT service shall be limited to a maximum of five thousand dollars ($5,000) per person as a one-time non-recurring expense. Reimbursement for OTT service shall require written documentation of the specific expenditure or purchase for which reimbursement is claimed.

1913.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Waiver – The Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 1916 of Chapter 19 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), entitled "In-Home Supports Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for in-home supports services provided by licensed or supervised professionals to participants with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver).

This is a new rule that was developed from section 993, of Chapter 9 of Title 29 DCMR, entitled "Independent Habilitation Services." The name of this new service under the Waiver has been changed to reflect a new focus. In-home supports services provides a blend of the previously available services under the former Waiver (*i.e.* Homemaker Services, Chore Services, Adult Companion Services, Personal Care Services, Attendant Care Services, and Independent Habilitation) that under the modified Waiver effective November 20, 2007 will be delivered based on an in-home supports plan developed by the person and his or her support team. This service delivery approach will address the problems encountered when multiple provider agencies and support staff were needed to deliver supports in a natural home due to the different provider qualifications and restrictions for each service. The new rule is intended to resolve staffing issues which had made it difficult to effectively support individuals in natural homes. In-home supports services are limited to delivery only in person's natural homes or the home of an unpaid caregiver. The service will be limited to no more than eight (8) hours per day of service; and is not available to participants receiving Host Home, Residential Habilitation or Supported Living Services.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of in-home supports services. These emergency rules are needed so that, on the effective date of the Waiver as modified, there will be rules in place consistent with the provisions of the Waiver as modified to permit this new service delivery approach to more effectively support individuals in the community in the Waiver to live in their natural home.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicaid and Medicare Services has also approved the corresponding Waiver with an effective date of November 20, 2007. The emergency rulemaking was adopted on November 19, 2007, and will become effective on November 20, 2007. The emergency rules will remain in effect for 120 days or until March 18,

2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of his intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

New section 1916 (In-Home Supports Services) of Chapter 19 of Title 29 DCMR is added to read as follows:

1916 IN-HOME SUPPORTS SERVICES

1916.1 In-home supports services shall be reimbursed by the District of Columbia Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

1916.2 A person shall only be eligible for in-home supports services when living in one of the following types of residences:

(a) His or her own home;
(b) The person's family home; or,
(c) The home of an unpaid caregiver.

1916.3 In-home supports services provide periodic support to assist the primary caregiver and/or enable the person to live independently and participate in community activities to the fullest extent possible.

1916.4 In-home supports services include a combination of hands-on care, habilitative support, and assistance with activities of daily living. In-home supports services eligible for reimbursement shall be as follows:

(a) Training and support in activities of daily living and independent living skills;
(b) Assistance in performing personal care tasks;
(c) Assistance with light household tasks specific to the needs of the person;
(d) Assistance with homemaking tasks such as food preparation and laundering clothes that are specific to the needs of the person;
(e) Training and support on understanding and utilizing community resources;
(f) Training on, and assistance in the monitoring of health, nutrition, and physical condition;
(g) Training and support in adapting to a community and home environment, including management of financial and personal affairs, and awareness of health and safety precautions; and
(h) Coordinating transportation to community events.

1916.5 In-home supports services shall not be used to provide supports that are normally provided by medical professionals.

1916.6 In-home supports services shall be authorized by the person's interdisciplinary team and provided in accordance with each person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.

1916.7 In-home supports services require an In-Home Supports Services Plan (Plan) prior to the initiation of services. A copy of the Plan shall be maintained where services are delivered, at the provider's main office, and with the Department on Disability Services (DDS) Case Manager. The Plan will detail:

(a) Activities and supports that will be provided and identify anticipated outcomes;
(b) A staffing plan and schedule;
(c) As necessary, the participation of professionals to meet the person's individual needs; and
(d) Emergency and contingency plans to address potential behavioral, health or emergency events.

1916.8 Each provider of in-home supports services shall be a social services agency as described in Chapter 9 of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), Section 1903.1. In addition, the provider agrees to:

(a) Be a member of the resident's interdisciplinary team;
(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for In-Home Supports Services under the Waiver;
(c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS for each person;
(d) Ensure that all in-home support services staff are prepared to facilitate interpreters for non-English speaking persons;
(e) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;
(f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;
(g) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention; and
(h) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds.

1916.9 Each person providing in-home supports services shall meet all of the requirements in Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), section 1911 in addition to the requirements set forth below:

(a) Complete competency based training in communication with people with intellectual disabilities;

(b) Complete competency based training in emergency procedures; and

(c) Be certified annually in cardiopulmonary resuscitation (CPR) and First Aid.

1916.10 Each provider of in-home supports services shall maintain progress notes on a weekly basis, or more frequently if indicated, on the IHP or ISP and Plan of Care. The provider shall also maintain current financial records of expenditures of private funds for each person if applicable. Progress notes shall include at a minimum: (a) progress in meeting each goal in the ISP assigned to the in-home supports services provider; (b) list of all community activities the person participates in with the in-home supports provider and the person's response to each activity; (c) any unusual health events, side effect to medication, change in health status, behavioral event, use of a restrictive procedure or unusual incident; (d) any visitor the person receives, special events, and any situation or event requiring follow-up during the delivery of the in-home supports services; and the dates and times services are delivered.

1916.11 Each provider of in-home supports services shall review the person's IHP or ISP and Plan of Care goals, objectives and activities at least quarterly and more often as needed. The provider shall propose modifications to the IHP or ISP and Plan of Care as appropriate. The results of these reviews shall be submitted to the person's DDS Case Manager within 30 days of the end of each quarter (i.e. by January 30th, April 30th, July 30th, and October 30th).

1916.12 The reimbursement rate shall be twenty dollars and sixty cents ($20.60) per hour billable in units of fifteen minutes at a rate of five dollars and fifteen cents ($5.15), and shall not exceed eight (8) hours per 24-hour day. A fifteen minute unit requires a minimum of eight (8) minutes of continuance service to be billed. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person. Each provider of in-home supports services shall assist the primary caregiver and/or participant with the coordination of the delivery of necessary day/vocational program, behavioral support, skilled nursing, transportation, and other required services from approved Waiver providers of those services in accordance with the requirements of the IHP or ISP and Plan of Care and the Plan. DDS may authorize an increase in hours in the event of a temporary emergency need for which there is no other resource available or demonstrated need based on the DDS-authorized utilization process.

1916.13 Reimbursement for in-home supports services shall not include:

(a) Room and board costs;
(b) Routine care and general supervision normally provided by the family or natural caregivers;
(c) Services or costs for which payment is made by a source other than Medicaid; or
(d) Travel or travel training to Supportive Employment, Day Habilitation or Pre-Vocational Services.

1916.14 In-home supports services may be used in combination with Medicaid State Plan Personal Care and Home Health Services so long as the services are not provided during the same period of the day.

1916.15 In-home supports services are not available to participants receiving Host Home, Residential Habilitation or Supported Living Services.

1916.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Family – Any individual related to the person by blood, marriage or adoption.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

In-Home Supports Services Plan – That plan required by these rules prior to the initiation of services which details the activities and supports that will be provided and identify anticipated outcomes; a staffing plan and schedule; as necessary, the participation of professionals to meet the person's individual needs; and emergency and contingency plans to address potential behavioral, health or emergency events.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

Person or Participant– An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-

based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – Shall mean the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 1917 of Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Live-In Caregiver Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for live-in caregiver services provided by or supervised by direct care staff to participants with mental retardation in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver).

This is a new rule that authorizes support to persons in the Waiver who own or lease their own home. Live-in caregiver services are provided in the participant's home by a caregiver who lives as a roommate in exchange for room and board. The live-in caregiver also provides needed In-Home Supports Services as detailed in the Plan of Care.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of live-in caregiver services. These emergency rules are needed so that, on the effective date of the Waiver as modified, there will be rules in place consistent with the provisions of the Waiver as modified to permit participants who own or lease their own home in the community to have live-in caregiver services in their home under the Waiver.

The District of Columbia Medicaid Program is also modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the corresponding Waiver with an effective date of November 20, 2007. The emergency rulemaking was adopted on November 19, 2007 and will become effective on November 20, 2007. The emergency rules will remain in effect for 120 days or until March 18, 2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of his intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new section 1917 (Live-In Caregiver Services) of Chapter 19 of Title 29 DCMR is added to read as follows:

1917 LIVE-IN CAREGIVER

1917.1 Live-in caregiver services shall be reimbursed by the District of Columbia Medicaid Program for each participant with mental retardation and developmental disabilities in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

1917.2 A person shall only be eligible for live-in caregiver services when the person is living in his or her own home. Caregiver services shall not be provided by an individual related to the person.

1917.3 Live-in caregiver services provide support to enable persons to live independently and participate in community activities to the fullest extent possible.

1917.4 Live-in caregiver services are provided in the person's home by a caregiver who lives as a roommate in exchange for room and board.

1917.5 The live-in caregiver shall assist in implementing the needed supports as identified in the Plan of Care which enable the person to retain or improve skills related to health, activities of daily living, money management, community resources, community safety and other adaptive skills needed to live in the community.

1917.6 Live-in caregiver services shall be authorized by the person's interdisciplinary team and provided in accordance with each person's individual habilitation plan (IHP) or individual support plan (ISP) and Plan of Care.

1917.7 Live-in caregiver services shall require a Live-In Caregiver Services Agreement (Agreement) prior to the initiation of services. A copy of the Agreement shall be maintained where services are delivered, at the provider's main office, and with the Department on Disability Services (DDS) Case Manager. Revisions to this Agreement shall be done by the Plan of Care Team and may occur at any time at the request of the participant, the Caregiver or the provider.

1917.8 Each provider of live-in caregiver services shall be a provider of residential habilitation services or supportive living services. In addition, the provider agrees to:

(a) Be a member of the resident's interdisciplinary team;

(b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for Live-In Caregiver Services under the Waiver;

(c) Maintain a copy of the most recent IHP or ISP and Plan of Care that has been approved by DDS/DDA for each person;

(d) Ensure that all live-in caregiver services staff are prepared to facilitate interpreters for non-English speaking persons;

(e) Ensure that the service provided is consistent with the person's IHP or ISP and Plan of Care;

(f) Offer the Hepatitis B vaccination to each person providing services pursuant to these rules;

(g) Provide staff training in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention;

(h) Ensure compliance with DDS policies governing reporting of unusual incidents, human rights, behavior management, and protection of person's funds; and

(i) Comply with the requirements of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238), as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code § 44-551 *et seq.*).

1917.9 Live-In Caregiver services shall be arranged by the provider organization. The caregiver may be subject to additional standards identified by the provider. The provider has twenty (24) hour responsibility for arranging and overseeing the delivery of services, providing emergency services as needed, and arranging for two (2) weeks of relief for the live-in caregiver per year as needed. The participant's home shall receive an initial inspection by the provider as well as periodic inspections with a frequency determined by the provider. The provider shall contact the caregiver at least once per month.

1917.10 Each person providing live-in caregiver services to a participant in the Waiver shall meet all of the requirements in Chapter 19 to Title 29 of the District of Columbia Municipal Regulations (DCMR), section 1911 in addition to the requirements set forth below:

(a) Complete competency based training in emergency procedures; and

(b) Be certified annually in cardiopulmonary resuscitation (CPR) and First Aid.

1917.11 The reimbursement rate shall be predetermined for each participant based on a signed lease agreement and standardized food and utility reimbursement *per diem*. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person in the person's place of residence.

1917.12 Live-in caregiver services shall not be billed on the same day as Residential Habilitation, Supported Living, Respite or Host Home Services.

1917.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

Live-In Caregiver Services Agreement – A written agreement required by these rules prior to the initiation of services and developed as part of the participant's Plan of Care, which shall define at a minimum all shared responsibilities between the Caregiver and the participant, including provisions for overnight stays of at least eight (8) hours in duration and no more than four (4) hours per day of support by the caregiver, activities provided by the caregiver, a typical weekly schedule and payment for both parties personal needs, utilities and food.

Person or Participant– An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Provider – Any non-profit, home health agency, social service agency or other business entity that provides services pursuant to these rules.

Waiver – The Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02), Reorganization Plan No. 4 of 1996, effective January 13, 1997, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption, on an emergency basis, of a new section 1918 to Chapter 19 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Professional Services." These rules establish standards governing reimbursement by the District of Columbia Medicaid Program for professional services to be provided by licensed or certified professionals to participants in the Home and Community-based Services Waiver for Persons with Developmental Disabilities (Waiver).

This is a new rule which authorizes a variety of professional services that are beneficial and support the general health of Waiver participants. These professional services also increase opportunities for community inclusion of persons enrolled in the Waiver. The services included in this rule are Massage Therapy, Sexuality Education, Acupuncture, Art Therapy, Music Therapy, Dance Therapy, Drama Therapy, and Fitness Training. This rule sets reimbursement rates for these professional services and limits the total expenditure to $2,250.00 per participant per year.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Waiver participants who are in need of professional services. These emergency rules are needed so that, on the effective date of the Waiver as modified, there will be rules in place consistent with the provisions of the Waiver as modified to permit reimbursement of professional services for persons in the Waiver with a limitation of $2,250.00 per participant per year.

The District of Columbia Medicaid Program also is modifying the Waiver to reflect these changes. The Council of the District of Columbia has approved the corresponding Waiver. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services have also approved the corresponding Waiver with an effective date of November 20, 2007. The emergency rulemaking was adopted on November 19, 2007, and will become effective on November 20, 2007. The emergency rules will remain in effect for 120 days or until March 18, 2008, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever comes first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new section 1918 (Professional Services) of Chapter 19 of Title 29 DCMR is adopted to reads as follows:

1918 PROFESSIONAL SERVICES

1918.1 Professional services shall be reimbursed by the District of Columbia Medicaid Program for each participant in the Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section.

1918.2 To be eligible for reimbursement, professional services shall be:

(a) Recommended by a physician for massage therapy, fitness training, or acupuncture;
(b) Reasonable and necessary for the treatment, restoration or maintenance of function affected by injury, illness or long term disability; and
(c) Included in the person's Individual Habilitation Plan (IHP) or Individual Support Plan (ISP) and Plan of Care.

1918.3 The professional services eligible for reimbursement shall be:

(a) Massage Therapy;

(b) Sexuality Education;

(c) Art Therapy;

(d) Dance Therapy;

(e) Drama Therapy;

(f) Fitness Training;

(g) Acupuncture; and

(h) Music Therapy.

1918.4 The specific professional service delivered shall be consistent with the scope of the license or certification held by the professional. Service intensity, frequency, and duration shall be determined by individual need. The professional services may be short-term, intermittent, or long-term, depending on the need. The interdisciplinary team developing the plan of support shall determine service utilization.

1918.5 Sexuality Education shall be delivered by:

(a) A Sexuality Education Specialist; or

(b) Any of the following professionals with specialized training in Sexuality Education:

(1) Psychologist;

(2) Psychiatrist;

(3) Licensed Clinical Social Worker; or

(4) Licensed Professional Counselor.

1918.6 The following professional services shall be delivered by credentialed professionals as set forth in the definition section of this rule:

(a) Massage Therapy;
(b) Art Therapy;
(c) Dance Therapy;
(d) Drama Therapy;
(e) Fitness Training;
(f) Acupuncture; and
(g) Music Therapy.

1918.7 Each professional, within the first two (2) hours of services, shall conduct an assessment and develop an individualized plan for the person that is in keeping with his or her choices, goals and prioritized needs. The individualized plan shall identify specific outcomes for the person. The completed plan shall be delivered to the person, family, guardian, other caretaker, or Department on Disability Services (DDS) Case Manager.

1918.8 Professional services may be utilized to:

(a) Provide training in sexuality and personal awareness, reproduction education, how to avoid victimization and safe sexual practices;
(b) Assist in increasing the individual's independence, participation, emotional well-being and productivity in their home, work and community;
(c) Provide training or therapy to an individual necessary to either develop critical skills that may be self-managed by the individual or maintained according to the individuals needs;
(d) Perform assessments and/or re-assessments and recommendations;
(e) Provide consultative services and recommendations specific to the expert content; and
(f) Provide necessary information to the individual, family, caregivers, and/or team to assist in planning and implementing plans per the approved IHP or ISP and Plan of Care.

1918.9 Services shall be provided by an agency or professional in private practice. Each professional and agency shall meet the requirements set forth in Chapter 19 of Title 29 DCMR.

1918.10 The agency or professional in private practice shall have a current Medicaid Provider Agreement that authorizes the service provider to bill for Professional Services.

1918.11 Each person providing professional services shall be acceptable to the person.

1918.12 Each professional shall provide DDS and the Department of Health, Medical Assistance Administration a brochure listing his or her academic background, licensure information, experience and the nature of his or her practice to assist those who will receive services in making their provider selection.

1918.13 Professionals, without regard to their employer of record, shall be selected by the person receiving services or his or her guardian or legal representative and shall be answerable to the person receiving services. Any provider substituting professionals for more that a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Case Manager to evaluate continuation of services.

1918.14 Each professional shall be responsible for providing written documentation in the form of reports, visit notes, progress notes, and other pertinent documentation of the person's progress or lack of progress. The documentation shall include evidence that services did not exceed the authorized frequency and duration as authorized in the individualized plan required pursuant to section 1918.7. The agency or professional in private practice shall maintain a copy of the documentation for at least six (6) years after the person's date of service.

1918.15 The reimbursement rate for professional services shall be:

(a) Sixty dollars ($60.00) per hour for Massage Therapy;

(b) Seventy five dollars ($75.00) per hour for Sexuality Education;

(c) Forty five dollars ($45.00) per hour for Art Therapy;

(d) Forty five dollars ($45.00) per hour for Dance Therapy;

(e) Forty five dollars ($45.00) per hour for Drama Therapy;

(f) Seventy five dollars ($75.00) per hour for Fitness Trainer;

(g) Seventy dollars ($70.00) per hour for Acupuncture; and

(h) Forty five dollars ($45.00) per hour for Music Therapy.

1918.16 The billable unit of service for professional services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

1918.17 Professional services shall be limited to a maximum of two thousand, two hundred and fifty dollars ($2,250.00) per participant per year and in accordance with the person's IHP or ISP and Plan of Care. Additional services may be prior authorized if the participant reaches the limitation before the expiration of the IHP or ISP and Plan of Care year and the participant's health and safety are at risk. The need for ongoing services shall be approved by a physician and DDS.

1918.99 DEFINITIONS

When used in this section, the following terms and phrases shall have the meanings ascribed:

Acupuncture – A professional service under this section which shall be provided by a person who is authorized to practice acupuncture pursuant to Chapter 47 of Title 17 of the District of Columbia Municipal Regulations (DCMR).

Art Therapy – A professional service under this section which shall be provided by a person who is certified to practice art therapy pursuant to certification by the American Art Therapy Association, Inc. and/or credentialing of the Art Therapy Credentialing Board.

Clinical Record – A comprehensive compilation of medical and other data that identifies the person and justifies and describes the diagnosis and treatment of the person.

Dance Therapy – A professional service under this section which shall be provided by a person who is authorized to practice dance therapy pursuant to Chapter 71 (Dance Therapy) of Title 17 DCMR.

Drama Therapy – A professional service under this section which shall be provided by a person who is certified to practice drama therapy pursuant to the National Association for Drama Therapy.

Fitness Trainer – A person who is certified to practice fitness training pursuant to Fitness Standards Council (FSC) Personal Trainer Accreditation.

Individual Habilitation Plan (IHP) – That plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) – The successor to the individual habilitation plan (IHP) as defined in the 2001 Plan for Compliance and Conclusion of *Evans v. Williams*.

Interdisciplinary Team – A group of persons with special training and experience in the diagnosis and habilitation of mentally retarded persons who have the responsibility of performing a comprehensive person evaluation while participating in the development, implementation, and monitoring of the person's IHP or ISP and Plan of Care.

Licensed Clinical Social Worker – A person who is licensed as an independent clinical social worker pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as an independent clinical social worker in the jurisdiction where the services are being provided.

Licensed Professional Counselor – A person who is licensed to practice professional counseling pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a professional counselor in the jurisdiction where the services are being provided.

Massage Therapy – A professional service under this section provided by a person who is authorized to practice massage therapy pursuant Chapter 75 of Title 17 DCMR.

Music Therapy – A professional service under this section provided by a person who is certified by the Certification Board for Music Therapists, which is managed by the American Music Therapy Association.

Person – An individual with intellectual and developmental disabilities who has been determined eligible to receive services under the Home and Community-based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

Physician – A person who is authorized to practice medicine pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed as a physician in the jurisdiction where services are provided.

Plan of Care – A written service plan that meets the requirements set forth in section 1904.4 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Progress Note – A dated, written notation by a member of the health care team that summarizes facts about a person's care and response to treatment during a given period of time.

Psychiatrist – A person who is licensed to practice psychiatry pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a psychiatrist in the jurisdiction where the services are being provided.

Psychologist – A person who is licensed to practice psychology pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1202 *et seq.*) or licensed as a psychologist in the jurisdiction where the services are being provided.

Sexuality Education Specialist – A person who is certified to practice sexuality education pursuant to certification by the American Association of Sexuality Educators, Counselors and Therapists (AASECT) Credentialing Board.

Waiver – The Home and Community-based Services Waiver for Persons with Mental Retardation and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), as may be further amended and approved by the Council and CMS.

Comments on the proposed rules shall be submitted in writing to Robert T. Maruca, Senior Deputy Director, Medical Assistance Administration, Department of Health, 825 North Capitol Street, N.E., 5th Floor, Washington, DC 20002, within thirty (30) days from the date of publication of this notice in the *D.C. Register*. Copies of the proposed rules may be obtained from the same address.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF EMERGENCY and PROPOSED RULEMAKING
Z.C. Case No. 07-08A
(Text Amendments – Temporary Ballpark Accessory Surface Parking Lots)
October 15, 2007

The Zoning Commission for the District of Columbia, pursuant to the authority set forth in §§ 1 and 8 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, 799; D.C. Official Code §§ 6-641.01 and 641.07) and the authority set forth in § 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), hereby gives notice of the adoption, on an emergency basis, of amendments to §§ 601, 901, and 2110 of the Zoning Regulations (DCMR, Title 11).

These amendments follow a previously approved amendment (Zoning Commission Order No. 07-08) which permits temporary parking lots on 11 separate squares in the vicinity of the ballpark.

These proposed text amendments allow temporary parking lots to also be located on Squares 603, 605, 657, 658, 661, 662, 662E, 664, 664E, and Square 658, Lot 7. These parking lots would be subject to all conditions and regulations adopted for temporary parking lots in Z.C. Order No. 07-08 noted above, including the overall cap of 3,775 spaces.

It is anticipated that the Washington Nationals' ballpark will begin operation in time for the opening day of the 2008 Major League Baseball season. This action is being taken on an emergency basis because, absent immediate action by the Zoning Commission, it is likely that adequate parking facilities will not be ready by that date. The ballpark is expected to generate a parking demand far in excess of the parking provided on the ballpark site. If additional facilities are not available to handle this short-fall in time for the opening, the Zoning Commission believes the resulting traffic problems pose a threat to public safety.

This emergency rule was adopted on October 15, 2007, and became effective on that date.

The Zoning Commission also gives notice of its intent to take final rulemaking action to adopt the following amendments to the Zoning Regulations in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register* or thirty days following referral of this amendment to the National Capital Planning Commission, whichever occurs last.

The emergency rule will expire on February 12, 2008, which is the 120th day after the adoption of the rule, or upon the publication of a Notice of Final Rulemaking in the *Register*, whichever occurs first.

The proposed amendments to the Zoning Regulations are as follows:

A. Chapter 6, MIXED USE (CR) DISTRICTS, § 601 is amended by adding the following new text (additions to the existing text are **bold** and **underlined**):

601.1 (dd) Notwithstanding § 602.1, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares **603, 605, 657,** 660, **661, 662, 662E, 664,** 665, 700, 701, 882; and on **Square 658, Lot 7,** Square 767, Lots 44 - 47; Square 768, Lots 19- 22; and Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District; in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares **603, 605, 657, 658,** 660, **661, 662, 662E, 664,** 665, 700, 701, 882; and on **Square 658, Lot 7,** Square 767, Lots 44 - 47; Square 768, Lots 19- 22; and Square 769, Lot 19 and those portions of Lots 18 and 20 within the CR District, shall be permitted as a special exception if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

B. Chapter 9, WATERFRONT (W) DISTRICTS, § 901 is amended by adding the following new text (additions to the existing text are **bold** and **underlined**):

901.1 (dd) Notwithstanding § 352.3, temporary surface parking lot accessory to the Ballpark shall be permitted on Squares **664E,** 707, 708, 708E, 708S, or 744S, in accordance with § 2110. In the event that the cumulative parking limit established in § 2110.1 (a) is met, additional temporary surface parking spaces accessory to the Ballpark on Squares **664E,** 707, 708, 708E, 708S, or 744S shall be permitted as a special exception in a W-2 District if approved by the Board of Zoning Adjustment pursuant to § 2110.2.

C. Chapter 21, OFF STREET PARKING REQUIREMENTS, is amended by adding the following new text (additions to the existing text are **bold** and **underlined**):

2110 Temporary Surface Parking Lots and Spaces for the Ballpark

2110.1 Permitted Use - Notwithstanding §§ 602.1 and 902.1 and not subject to any otherwise applicable proximity requirement, a temporary surface parking lot accessory to the Ballpark shall be permitted as a temporary use on Squares **603, 605, 657, 658,** 660, **661, 662, 662E, 664, 664E,** 665, 700, 701, 707, 708, 708E, 708S, 744S, and 882; and **Square 658, Lot 7,** Square 767, Lots 44 – 47; Square 768, Lots 19 – 22; and Square 769, Lots 18 - 21

("the subject squares") in accordance with §§ 2110.3 through 2110.5 and the following provisions:

D. Chapter 21, OFF STREET PARKING REQUIREMENTS §2110.5 is amended by adding the following new subsection:

2110.5 (j) A minimum of 5% of parking spaces shall be reserved for a registered and recognized, publicly accessible car/ride-share program with a significant District user base and a mandate that is not commuter-oriented, such as GoLoco. These car/ride share spaces shall be located in premium, visible, bannered locations and will be available, for a fee, exclusively for this use until the start of the event on that day.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the D.C. Register. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 210-S, Washington, D.C. 20001. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.